

Thomas B. Kenworthy
(*Pro Hac Vice* Application To Be Filed)
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Attorneys for Plaintiff/Counterclaim Defendant
TrialCard Incorporated

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

TRIALCARD INCORPORATED,)	CIVIL ACTION
)	
Plaintiff,)	NO.: 3:11-cv-05693-FLW-TJB
)	
v.)	
)	
MEDIMEDIA USA, INC.,)	
)	
Defendant.)	
)	
)	ANSWER AND DEFENSES TO THE
)	COUNTERCLAIM OF PSKW, LLC
<hr/>)	
MEDIMEDIA USA, INC.)	
and PSKW, LLC,)	
)	
Counterclaimants,)	
)	
v.)	
)	
TRIALCARD INCORPORATED,)	
)	
Counterclaim Defendant.)	
<hr/>)	

ANSWER TO COUNTERCLAIM

TrialCard Incorporated (“TrialCard”) hereby responds to the counterclaim of PSKW, LLC (“PSKW”) in accordance with the numbered paragraphs thereof as follows:

26. Admitted.

27. Admitted upon information and belief.

28. Admitted.

29. Admitted.

30. Admitted.

31. TrialCard incorporates herein by reference the averments of paragraphs 26 through 30 above. It is denied that TrialCard has failed to mitigate its damages and it is denied that TrialCard's claimed damages are either barred or reduced.

32. It is admitted that TrialCard has charged PSKW with infringement of the '531 patent.

33. Denied.

34. Denied as stated. TrialCard is seeking a judicial resolution of its rights against PSKW under the '531 patent and will fully abide by the final adjudication of those rights by the courts.

35. Denied.

36. TrialCard incorporates herein by reference the averments of paragraphs 26 through 30 above. It is denied that TrialCard has failed to mitigate its damages and it is denied that TrialCard's claimed damages are either barred or reduced.

37. It is admitted that TrialCard has charged PSKW with infringement of the '531 patent.

38. Denied.

39. Denied. By way of further answer, TrialCard avers that the United States Patent and Trademark Office has duly determined that the claims of the '531 patent are patentable over

U.S. Patent No. 5,832,449 (Cunningham, *et al.*) in view of U.S. Patent No. 5,644,723 (Deaton, *et al.*).

40. Denied.

ADDITIONAL DEFENSES IN RESPONSE TO PSKW'S COUNTERCLAIM

TrialCard makes the following additional averments in response to PSKW's counterclaim:

1. On April 12, 2011, the '531 patent, entitled "Method of Delivering Goods and Services Via Media," was duly and legally issued by the United States Patent and Trademark Office.

2. TrialCard is the owner by assignment of all right, title and interest in and to the '531 patent.

3. On information and belief, PSKW has infringed and continues to infringe the '531 patent in violation of 35 U.S.C. § 271 by its marketing of programs promoting pharmaceutical products so as to perform or cause to be performed all of the steps of at least claim 1 of the '531 patent.

4. As a result of PSKW's infringement of the '531 patent, TrialCard has suffered and continues to suffer injury to its business and property.

5. Unless judgment is entered declaring that the asserted claim(s) of the '531 patent are infringed by PSKW and not invalid or unenforceable, and enjoining PSKW and its officers, agents, servants, employees and representatives, and all those persons and entities in active concert and participation with it, from infringing the '531 patent, TrialCard will be irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, TrialCard respectfully requests entry of a judgment that includes:

- A. A denial of all relief requested by PSKW;
- B. A declaration that PSKW has infringed the '531 patent;
- C. A declaration that the asserted claims of the '531 patent are neither invalid nor unenforceable;
- D. An injunction enjoining PSKW and its officers, agents, servants, employees and attorneys, and all those persons and entities in active concert with it, from infringing the '531 patent;
- E. An award of damages in favor of TrialCard and against PSKW, such damages being in an amount sufficient to fully compensate TrialCard for PSKW's infringement of the '531 patent, and an assessment of prejudgment and post-judgment interest;
- F. A finding by the Court that this is an exceptional case under 35 U.S.C. § 285 and an award to TrialCard of its costs, expenses and attorneys' fees in this action; and
- G. Such other and further relief as the Court deems just and proper.

DATED: December 21, 2011

/s/ Kenneth L. Racowski

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CERTIFICATE OF SERVICE

I, KENNETH L. RACOWSKI, do hereby certify that on this date, I caused the foregoing Answer And Defenses To The Counterclaim Of PSKW, LLC to be served upon all counsel of record via ECF.

DATED: December 21, 2011

/s/ Kenneth L. Racowski
KENNETH L. RACOWSKI